

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

KEVIN GOURDINE,

Movant,

v. 6:11-cv-69

UNITED STATES OF AMERICA,

Respondent.

ORDER

Movant Kevin Gourdine ("Gourdine") now moves the Court asking for specific performance of his plea agreement, a reduction of his sentence, and an evidentiary hearing. *See* Doc. 10.

Gourdine, however, misunderstands the relief he has gained. Gourdine has obtained only the right to pursue a direct appeal. *See* Doc. 6 at 9. Accordingly, his other claims are premature. *See id.* Gourdine's motion is ***DENIED***.

The Eleventh Circuit has established a procedure for district courts to follow upon allowing out-of-time appeals as a 28 U.S.C. § 2255 remedy:

(1) the criminal judgment from which the out-of-time appeal is to be permitted should be vacated; (2) the same sentence should then be reimposed; (3) upon reimposition of that sentence, the defendant should be advised of all the rights associated with an appeal from any criminal sentence; and (4) the defendant should also be advised that the time for filing a notice of appeal from that

re-imposed sentence is [fourteen] days, which is dictated by Rule 4(b)(1)(A)(i).

United States v. Phillips, 225 F.3d 1198, 1201 (11th Cir. 2000). Accordingly, the Court ***VACATES*** Gourdine's Judgment in his criminal case. *See United States v. Gourdine*, 6:10-cr-1, Doc. 149 (S.D. Ga. July 16, 2010). The Court ***ORDERS*** the Clerk of the Court to enter a new Judgment imposing the same terms as originally imposed, identical in all respects to the original Judgment, save only for the date of entry.

The Court specifically advises Gourdine that the entry of the new judgment creates a fourteen-day period within which Gourdine may prosecute a direct appeal of his criminal conviction. Thus, Gourdine has fourteen (14) days from the date of the reimposition of his sentence to file a timely appeal. *See* FED. R. APP. P. 4(b)(1)(A)(i). The Clerk is ***DIRECTED*** to make arrangements for the appointment of counsel.

This 23rd day of April 2012.



B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA